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**REMARKS**

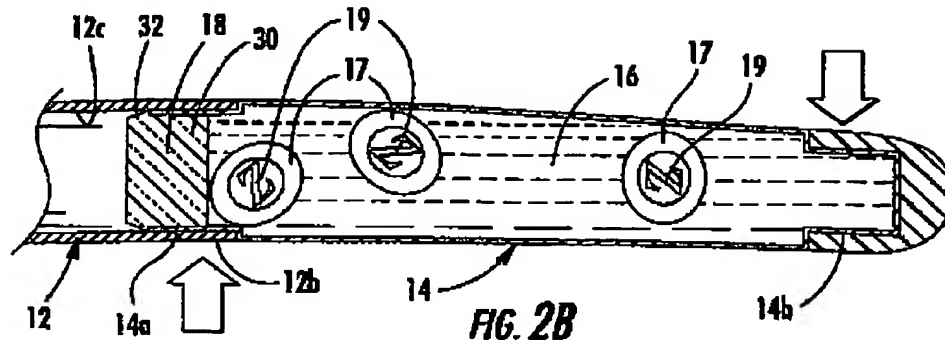
Claims 1, 3-13, 15-20 and 22-26 are pending. Claims 1, 4 and 6 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,304,522 to Wuestman ("Wuestman"). Claims 3, 4, 5, 7-13, 15-20 and 22-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wuestman in combination with various secondary references.

Applicants respectfully traverse the rejections under 35 U.S.C. §102 and 35 U.S.C. §103 for at least the reasons set forth below.

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### §102 Rejections Are Overcome

Fig. 2B from Applicants' application is set forth below:



The open end 14a of the second barrel portion 14 has an annular rim 20, an internal surface 22 and an external surface 24, as illustrated. The plug 18 includes a shank 30 and a head portion 32 connected to the shank 30. The head portion 32 extends radially outward from the shank 30 to define a circumferential shoulder 34. When the shank 30 is disposed within the open end 14a, the shoulder 34 is in contacting relationship with the annular rim 20. The plug head portion 32 tapers radially inward such that the head portion 32 does not contact the inside surface 12c of the first barrel portion second end 12b and such that flexure or bending of the first and second barrel portions 12, 14 relative to one another does not cause the head portion 32 to contact the inside surface 12c of the first barrel portion second end 12b. The tapered configuration of the plug head portion 32 prevents contact with the inside surface 12c of the first barrel portion second end 12b even under extreme bending. By avoiding contact, the plug 18 remains undisturbed, thereby avoiding any loss of sealing ability.

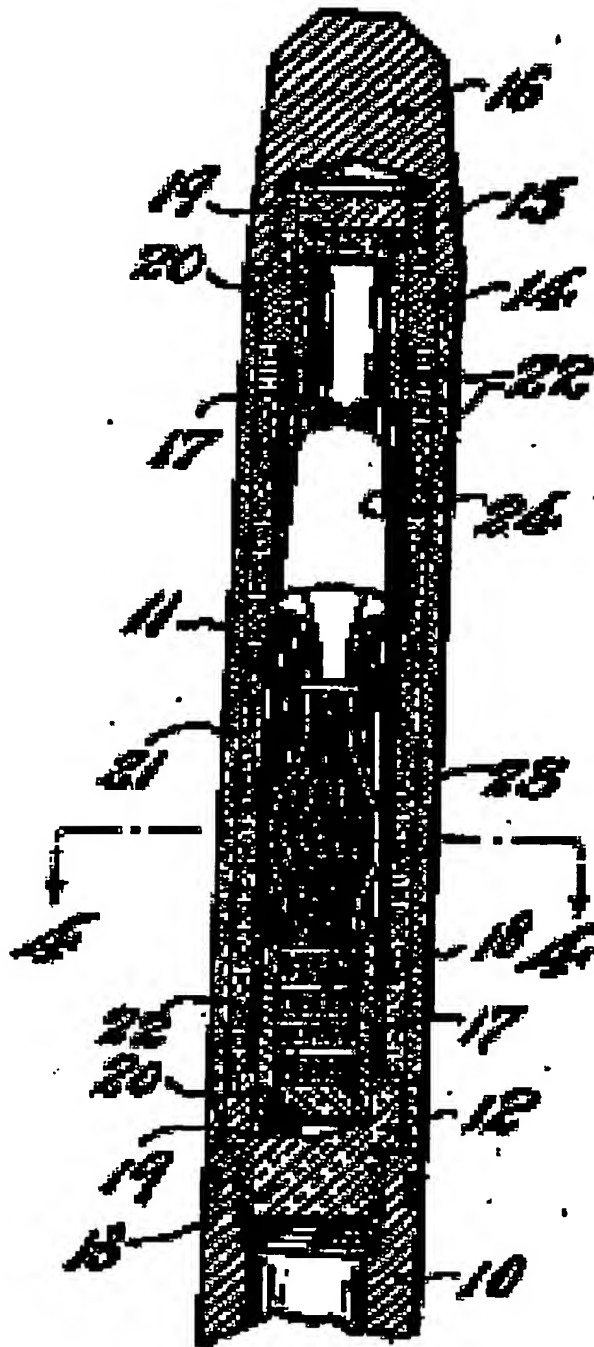
The Action states that Applicants' arguments filed in the October 14, 2004 response have been considered but are not persuasive for the following reasons:

1) "In response to applicant's argument that the Wuestman reference discloses that the plug 12 is threadingly engaged with the barrel 10, it is considered that the claims do not preclude the use of such a threading engagement."

2) "Fig. 3 of Wuestman clearly shows that the shank portion of the plug 12 does taper inwardly." (Final Action, Page 7).

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Fig. 3 from Wuestman is set forth below.



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It is the Final Action's position that the bottom end plug 12 of Wuestman is identical to the claimed plug in Applicants' independent Claim 1

Applicants' independent Claim 1 recites a writing instrument, comprising:

an elongated first barrel portion that comprises an open first end through which a writing element is extendable, and an opposite open second end;

a transparent, hollow second barrel portion that comprises an open third end and an opposite fourth end, wherein the third end is secured within the second end of the first barrel portion, and wherein the third end has an annular rim, an internal surface and an external surface;

a fluid disposed within the hollow second barrel portion; and

a plug disposed within the third end, wherein the plug prevents the fluid from escaping from the hollow second barrel portion, *wherein the plug comprises a shank and a head portion connected to the shank, wherein the head portion extends radially outward from the shank to define a circumferential shoulder, wherein the shank is disposed within the third end and the shoulder is in contacting relationship with the annular rim, and wherein the head portion tapers radially inward such that the head portion does not contact an inside surface of the first barrel portion second end and such that flexure of the first and second barrel portions relative to one another does not cause the head portion to contact the inside surface of the first barrel portion second end.*

Independent Claims 13 and 20 contain similar recitations.

The Wuestman plug clearly does not have a head portion that extends radially outward from the shank to define a circumferential shoulder, and wherein the head portion tapers radially inward such that the head portion *does not contact* an inside surface of the first barrel portion second end. The portion of the Wuestman plug that the Final Action considers the "head" is the equivalent of the shank portion of Applicants' plug, not the head.

Nonetheless, no portion of the Wuestman plug tapers inwardly such that it does not contact an inside surface of a barrel portion. To the contrary, every portion of the Wuestman plug 12, including the portions that the Action considers the head and shank, is in contact with the barrel 10. The Wuestman writing instrument fails to illustrate or describe a plug having a head portion that tapers radially inward, as claimed in amended Claim 1 and as clearly illustrated in Applicants' Fig. 2B above, that does not contact an inside surface of a barrel portion. Moreover, Wuestman fails to teach that the head portion of plug 12 does not contact the inside surface of the barrel 10 under flexure as recited in Applicants' Claim 1.

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The Final Action states that Fig. 3 of Wuestman clearly shows that the shank portion of the plug 12 does taper inwardly. Applicants fail to see where Fig. 3 clearly shows a portion of the plug 12 tapering inwardly. Nonetheless, it is *not* the shank portion that is recited in Applicants' independent Claim 1 as being the portion that tapers inwardly. To the contrary, it is the head portion that is recited as tapering radially inward.

In addition, Wuestman fails to describe that flexure of the barrel portions relative to one another does not cause the head portion of the plug 12 to contact the inside surface of a barrel portion, as recited in Applicants' independent Claim 1. As discussed above, because the plug is threadingly attached to the barrel portion, the entire plug 12, head and shank, is in contact with the inside surface of a barrel portion.

As viewed by the ordinary artisan, there is a great difference between Applicants' claimed invention and the writing instrument of Wuestman. Because Wuestman does not disclose all of the recited elements of independent Claim 1, Claim 1 and all claims depending therefrom are not anticipated by Wuestman. In view of the above, the rejections under 35 U.S.C. §102 are overcome.

### **§103 Rejections Are Overcome**

For at least the same reasons set forth above with respect to 35 U.S.C. §102, Applicants respectfully assert that the primary reference, Wuestman, fails to teach or suggest the recitations of Applicants' independent claims, particularly as amended above, and all claims depending therefrom. Moreover, neither the primary reference Wuestman, nor any of the secondary references recognize that flexure of a writing instrument containing a liquid and plug may be problematic from the standpoint that the plug may lose its seal and leak when contact is made with the inner surface of a barrel of the writing instrument. Not only do these references fail to appreciate the problem, they fail to teach or suggest Applicants' claimed plug structure in independent Claims 1, 13 and 20 that overcomes this problem.

In addition, with respect to Applicants' Claims 7 and 8, the Final Action states that "Wuestman fails to disclose that the object 18 is configured to be buoyant within the fluid." (Final Action, Page 4). Applicants respectfully submit that "object 18" of Wuestman is not an object disposed within a fluid, as recited in Applicants' Claim 7. Wuestman describes and

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illustrates material 18 that is deposited in a chamber. The material 18 is described as being a solid, a liquid, a granular or discrete material. (Wuestman, Page 2, First Col., Lines 1-5). The material 18 is not, however, disposed within a liquid.

Accordingly, Applicants respectfully request withdrawal of the present rejections under 35 U.S.C. §103.

In view of the above, it is respectfully submitted that this application is in condition for allowance, which action is respectfully requested.

Respectfully submitted,



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Erin A. Campion